

Chapter X

Conclusion and Summation

Social Security is each an inspiration moreover as a system. It represents essentially a System of protection of people who square measure in want of such protection by the Society or State as associate agent of the society. Such protection becomes essential in contingencies like retirement, resignation, retrenchment, old age, death and bad condition, that square measure on the far side the management of the individual members of the Society. Men square measure born otherwise, they suppose otherwise and act otherwise. State as associate agent of the society has a very important mandate to harmonize such variations through a protective covering to the poor, the weak, the underprivileged and therefore the underprivileged. Since the last century, human civilization has witnessed a silent revolution, unseen and inaudible by several.

Though its impact is refined, it's of utmost significance to everybody. The most critical activity of the most recent century was bigger life span that has brought about partner expanding maturing populace around the world. A person ages endlessly through associate irreversible organic process, socially as perceived by the members of the society, economically by retiring from the manpower and chronologically with the passage of your time. The survival of partner expanding scope of people on the far side their antiquated grown-up jobs causes populace maturing. The unimaginable increase in expectancy is also termed joined of the best triumphs of human civilization. However it's expose one in all the toughest challenges to be met by electronic equipment society. India, being a state, has taken upon itself the responsibilities of extending numerous edges of Social Security and national assistance to its voters.

The history of labour legislations in India clearly shows that the concept of social security was not alien to India. In the past it was prevalent in form of family or religious institution. it slowly lost its importance due to modernization and change in the family structure. The growth of industries also had a huge impact on India. It leads to the demand for formulation of effective labour policies. Prior to independence the laws dealing with social security was almost non-existential. After independence the framers formulated many provisions dealing with social security laws. However, no serious steps were undertaken towards the policies on social security. For many decades this continued to remain a neglected in India. For two to three decades after Independence, there was hardly any discussion in this area in the India five Year plan documents, until the Ninth

Plan. They were silent on social security planning and did not even take cognizance of the prevailing schemes.⁵⁹² Over the last few decades, India has witnessed a shift in the social security discourse. Despite the literally hundreds of programs for social protection of the underprivileged, due to poverty, ignorance and lack of effective implementation appears to be a far distance dream.⁵⁹³

The Social Security legislations in Republic of India derive their strength and spirit from The Directive Principles of the State Policy as contained within the Constitution of India. Social Security is progressively seen as an integral a part of the event method. It Helps to make a lot of positive perspective not simply to structural and technological amendment however additionally the challenge of economic process and to its potential edges in terms of larger potency and better productivity. The Constitution of India was written to uphold and paraphrase the ideals that impressed the struggle for freedom.

The predominant and declared goal of the struggle wasn't mere independence from imperialist rule however the action of human freedom all told its magnificence. This Meant evolving and protective a social and political order that secure freedom. It additionally meant making the fabric conditions (including the fabric requisites) that the subject required to relish the richness of freedom. The Fundamental Rights within the Indian Constitution guarantee right to life, and the Hon'ble Supreme Court in numerous landmark judgments has expanded the meaning of 'life' and have included within its ambit 'right to adequate means of livelihood'.

The Social Security's primary goal is to make sure that each one has the means that of living, food, shelter, health, and care. It follows, therefore, that Social Security falls within the meaning of 'life' as provided under Article 21 i.e. right to live a dignified life. Asian nation is constitutionally a socialist state and therefore the principal aim of socialism is to eliminate difference of financial gain and standing and to supply an honest normal of living to the folks. Thus, Commitment to supply Social Security to the impoverished is inherent within the Indian Constitution, deservedly claiming the standing of elementary right.

Social security is a comprehensive approach designed to prevent deprivation, assure the individual of basic minimum income for himself and his dependents and to

⁵⁹² Varma, "Social Security for Unorganized Sector", 6

⁵⁹³ Ibid

protect the individual from any uncertainties.⁵⁹⁴ On the other hand to protect the interest of the workers in unorganized sector the efforts have been piecemeal. There are few Acts such as Minimum Wages Act, 1948, The Unorganized Sector Worker's Social Security Act, 2008, National Rural Employment Guarantee Act, 2005 that to an extent deals with unorganized sectors. However, in spite of these beneficial legislations, the benefits and amenities prescribed under these laws are deprived of to them in the majority cases. It can be said that more than 90% of our workforce does not have the benefit of the minimum protection and security that they need. This is a situation which should bring ignominy to all those who matter of care and commitment to the rights and welfare of labour, as well as all those who abide responsibility for ensuring the rights and welfare of the people in the society.

The Workmen Compensation Act is seriously criticized mainly by the employers who have pointed out its shortcomings. They have complained that the provisions of the Act do not look to be fair to them. They do not understand why only they are held responsible to pay full compensation against an accident for which they are not personally responsible. Further, they say that in case of fatal injury even if a worker's own fault causes death, merely the employer is generally held responsible for such death and demand for full compensation to the deceased's dependants.

From the point of the workers, the defect of the Workmen compensation Act especially its implementation. The implementation of the Act needs to be improved, particularly in regard to small establishments where attempt is more commonly made to avoid the payment of compensation to the workers for one reason or the other. The bigger companies, however, follow up the Workmen Compensation Act, and pay the compensation to the workers as mentioned in the Act. Though, they also do not often report particularly in case of minor injuries. Secondly, there is avoidable delay in the disposal of applications relating to compensation for the fulfillment of the judicial formalities. Thirdly, in seasonal factories and mines the cases of accidents are often settled on minor payments and several cases of accidents go unreported. The payment of compensation is usually avoided in case of the contract labour. They are badly exploited by their employers. Fourthly, another important shortcoming of the Act is that there is no liability at present of the employer to report non-fatal injury cases to the concerned commissioner.

⁵⁹⁴ The principal social security laws enacted in India are a) The Employees' Compensation Act, 1923, b) The Employees' State Insurance Act, 1948, c) The Employees' Provident Funds and Miscellaneous Provisions Act, 1952, d) The Maternity Benefit Act, 1961, e) The Payment of Gratuity Act, 1972, f) The Factories Act, 1948.

Besides, the service cards are not maintained in the factories. When there is any occurrence of accident, the worker and his family migrate to the village without any information or any address. It becomes very difficult to find out their particulars. Moreover, most of the workers are uneducated and ignorant and in several cases they do not understand their right of compensation and, hence, get no compensation. Mr. Shiva Rao observes: "Beyond a point, it does not pay a workers in India to demand fulfillment of right."⁵⁹⁵

The employers often takes the benefit of this weakness on the part of labour and often declines to pay his compensation or settles such cases on his own terms and conditions. Besides, the Act makes no provision for medical help while the labour becomes the victim of any accident. When a worker dies or gets serious injuries, it becomes just impossible to his dependents to meet out the situation effectively and file a claim for the compensation while generally they live far away from the factory areas. Mr. A.N. Agarwal rightly comments: "The compensation to the worker remains merely on paper."⁵⁹⁶

While as a compound insurance the ESIS has been valued in its commencement, limitations and difficulties have been experienced in its implementation. The level and quality of medical care has not been found to be satisfactory in many areas, the dual administrative control of the state government and the corporation has added to the tribulations of administering health services, which is by itself an intimidating task. The dissatisfaction is greater in areas where good infrastructure is lacking, and in establishments having well- managed health care system for its senior employees who earn wages above the ceiling and who are not compelled to join the ESIS, on the other hand, the scheme has been recognized as extremely useful where alternative facilities do not exist, and where the centre are staffed by sincere and competent professionals. The ESI Scheme has been appreciated by non-regular employees, such as casual and contract workers, whom employers normally like to exclude from any protection.

After enactment of Employees State Insurance Act, 1948, a Medical benefit Scheme for the organized working class in selected industries, the country passed another legislation Employees Provident Fund Act, 1952. The institution of Provident Fund though not considered strongly as a social security measure is included in the

⁵⁹⁵ Dr. U.C. Kulshrestha "Labour Problems & Social Welfare (Lakshmi Narain Agarwal Publication revised Edition 2005) 213

⁵⁹⁶ *ibid*

programmes of social security, due to the colonial considerations of the erstwhile British Government world over. Colonial kings never gave anything to colonies, but took away something from the colonies. So is the case with Provident Funds. Collecting the money of the workers, be it the Employees share or the Employers share, spending it for the Government, and passing back to the worker when he leaves the services with interest have been guiding principles of Provident Funds right from the day one since they have been established anywhere in the world. In other words, the worker has become a financier to the Government at a very cheaper rate of interest, under the disguise of savings for the future or compelled by savings for the future. The unseen future has always been haunting every person, for future has no fixed date.

However, for the Provident Fund subscribers the fixed date of future is either death or retirement.

India as it once was a British Colony had the influence of British Economic philosophy and therefore started an institution of Provident Fund way back 1952, i.e., five years after achieving freedom. Although, during 1952 itself the government felt to have a Pension Scheme for the working class it could not come out with a Pension Scheme until 1995. However, an attempt in this direction was made way back in 1971 with a scheme of Family Pension Scheme, 1971. The Employees Pension scheme, which came after a great deal of demand and deliberations, is still not free from criticism, dissatisfaction and adverse comments. Everyone who was economically sound knocked the doors of the courts to see that the Pension Scheme is struck down- of course without seriously knowing the benefit of the scheme.

The literature so far reviewed however, does not go in to the details of the functioning of the organizations established for the delivery of Social Security Benefits for attacking contingent poverty. There are several stray comments on the efficiencies of the organizations but empirical approach to examining the shortfalls is not seen. Some international writers like *Mukul Asher* and *P.S.Srinivas* have only commented on the investment patterns in practice in the Employees Provident Fund Organization without going into the details of the mandate before such organizations and their social responsibility. There are many recommendations on extending the benefits to a large number of the unprotected working class, ironically none of the above recommendations have seen the light of the day nor do we find any road map to approach the unprotected and uncovered lot. Concrete suggestions to improving the administrative arrangements are also not seen in the literature reviewed.

The Employees Provident Fund organization is a body corporate with independent Board. Several committees for its effective functioning assist the Board. The organization has Zonal, Regional, and Subordinate Regional Offices for effective benefit delivery and for decentralized administrative network. However, the autonomy of the Board is far from reality for there are more than 45 areas where central Government controls the day-to-day functioning of the Board. Functional autonomy is therefore not there for the Board. Board thus is not able to take some policy decisions for the simple fear of Central Governments interventions.

The coverage and registration of the workers by the Employees' Provident Fund Organization is guided by the statutory provisions of the Act and is employer centric. The provident fund commissioners do not go on a coverage drive and cover the establishments on their own. There are stray cases in the entire organization where the regional provident fund commissioners have initiated coverage drives on their own to meet the annual action plan targets of improving the coverage. In majority of the cases, it is left to the employer to cover his workers if he fulfills the test of employing 20 or more persons in his establishment and if the establishment falls within the class of the establishments notified in the schedule. Accordingly it is found that the number of the workers reported by various agencies do not tally with the number of the covered workers reported by the Employees' Provident Fund Organization. Particularly the number of the Small Scale industries operating in the country and the number of registered companies working in the country put together cross the number of establishments covered by the organization. It is further found that the organization does not have any data bank of the establishments working in the country with their employee's strength, however there is a system of maintaining a marginal register by the inspectors of the organization. This is a register where an Inspector, after conducting field surveys, has to list all the Establishments employing less than 20 people but otherwise coverable under the Act. This is not strictly followed. Even it is found maintained at some regions it does not contain any useful information to cover the establishment in event of its employing more than 20 persons. There was no reason found why the Cinema Halls employing 5 or more persons have been extended the benefits by the statute and not other organized activities like Hotels, Restaurants, and Petrol Pumps and other Shops and Establishments with the same employee's strength. All establishments other than Cine Theatres require having 20 or more persons employed to extend the coverage under the Employees Provident Fund and Miscellaneous Provisions Act. The system of voluntary disclosure of the employees'

strength by the establishments and their being in the schedule of industries is still a non-starter thereby defeating very purpose of the legislation.

The implementation of the Maternity Benefit Act has been retarded and marked with malaise both on the part of the government and employers. In the absence of an effective monitoring system, there is no way to ensure coverage. The itinerant nature of these workers also poses a problem. Also, the use of the term “maternity benefit” itself is often misunderstood. The Act provides for “maternity benefit” in two ways – maternity leave and medical bonus for delivery and postnatal care. Both these components are essential to support a woman

Under the Maternity Benefit Act no employers is allowed to discharge or dismiss a woman employee while she is on maternity leave. If during her maternity leave a notice for discharge and dismissal is served, she will be entitle to her maternity benefit and medical bonus. Gross misconduct, which has to be communicated to the woman in writing, disentitles her from claiming her maternity benefit and medical bonus. The State government is given the power to make rules of what constitutes gross misconduct. The lacunae in these provisions are protection of employment per se during the periods of pregnancy, which are not under maternity leave. The Act mandates the keeping of registers by employers. In order to evade giving the women these statutory benefits, the names of women workers are not entered in the register or the women are employed through contractors.⁵⁹⁷ In seasonal factories, employers do not maintain any record or service registers and do not pay benefits on the ground that the qualifying period for which the women should have worked is not satisfied.⁵⁹⁸

The Maternity Benefit Act mandates the appointment of Inspectors who are given the function of overseeing implementation of the Act but the number of inspectors is inadequate with insufficient women inspectors on the job. Further, the number of inspections under the Act are also insufficient.

Section 4⁵⁹⁹ of the Maternity Benefit Act, denies the woman the right to get employed immediately after her pregnancy for 6 weeks for no legitimate reason. This prohibition is without any legitimacy and must be repealed with immediate effect.

⁵⁹⁷ C.L. Patel, Justice for Women, Central India Law Quaterly.

⁵⁹⁸ *ibid*

⁵⁹⁹ Maternity Benefit Act 1961, Sec 4. Employment of or work by, women prohibited during certain periods. —

(1) No employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery,¹¹ [miscarriage or medical termination of pregnancy].

(2) No women shall work in any establishment during the six weeks immediately following the day of her delivery¹² [miscarriage or medical termination of pregnancy].

The recent amendment in the M. B (Amendment) Act 2017 is silent on paternity leave. The whole responsibility is shifted on the mothers for child caring. Many socialist are of the view that women employment in the private job will decrease due to the fear of granting them maternity leave upto 26 weeks in the initial period. However, it is worth to mention that there is no wage limit for coverage under the Act. The Act covers permanent workers, full-time workers, workers with identifiable employers and/or designated places of work, who form a tiny segment of the workforce especially in rural India. The unorganized sector i.e. temporary and casual workers and those employed through sub-contracting, outsourcing and so on — are not effectively covered under this Act because of the emphasis on an identifiable employer and workplace.

The labour force which is not involved in a manufacturing process or where the number of workers is less than the statutory number required in the Act, are not covered by this Act. For example, women in home based work; sub-contracting work or self-employed workers are not under the purview of this Act

There are also restrictions of daily working hours for men and women in factories. Sections 23 and 27 of the Factories Act prohibit women from handling dangerous devices. However, all these provisions are not applied in practice for a section of the workers. Moreover, the Act is applicable only to manufacturing units, organized as factories. The provisions of this Act do not apply to the vast masses of workers in the unorganized sector employed in smaller manufacturing units and other sectors.

While the Factories Act permits for State Governments to vary these limits by notification, it mandates that the notification cannot make a variation which allows a woman worker to work between 10 P.M and 5 A.M. Prohibiting women workers from working at night, based on sex is unreasonable and amounts to discrimination by the State since it take away the right of choice of a woman worker to work at night and legitimizes the role of the State in enacting arbitrary laws which curtails the freedom of association and right to opportunity and employment of women at any time they choose. This prohibition has resulted in a decrease of the employment of women workers by employers

(3) Without prejudice to the provisions of section 6, no pregnant women shall, on a request being made by her in this behalf, be required by her employer to do during the period specified in sub-section (4) any work which is of an arduous nature or which involves long hours of standing, or which in any way is likely to interfere with her pregnancy or the normal development of the foetus, or is likely to cause her miscarriage or otherwise to adversely affect her health.

(4) The period referred to in sub-section (3) shall be—

(a) the period of one month immediately preceding the period of six weeks, before the date of her expected delivery;

(b) any period during the said period of six weeks for which the pregnant woman does not avail of leave of absence under section 6.

because it means adding more people to the muster rolls as one entire shift of workers becomes unavailable for work. Thus, no prohibition through protective legislative can be made which denies women their right to equality of opportunity and treatment.

Vide the Factories (Amendment) Bill, 2005, an amendment to the Act was proposed to address the issue of the right of women to night work, but it was not passed. Several other laws including the Mines Act, prohibits night work of women. It is essential that the law is amended as soon as possible in order that women are able to do night work along with effective regulations to protect the health, safety and welfare of the women workers.

It was reported in the Shramshakti Report in 1988, that the minimum wage legislations were not strictly followed at an all India level across various industries, with the exception of some regions of Kerala where trade unions exist. In many cases the workers were switched to piece-rate basis so that it was not covered by the Minimum Wages Act.⁶⁰⁰ Though this Act is a legal protection for unorganized sector workers it is often found that among construction workers, beedi workers, agarbatti workers, agricultural workers, workers in small shops and hotels, wages actually paid to the workers are below the prescribed minimum wages fixed by the government for the respective industry.

The Act helps unorganized workers who are working in the scheduled employments. But nearly 60% of the workforce in the unorganized sector is self employed or home-based. Thus, they remain outside the purview of The Minimum Wages Act, 1948, although they constitute the majority in the sector.

The minimum wage is not uniform since it varies from one employment to another and the government can fix a different minimum wage for different industries or even similar industries in different localities. It is applicable to agricultural, non-agricultural and to rural as well as urban workers.

Due to the absence of unionization, low literacy levels of women workers, and lack of implementation infrastructure it is often easy for the employers to violate the provisions under this Act. Lack of adequate numbers of inspectors for ensuring the implementation of the Act, in the unorganized sector, is one of the reasons that the

⁶⁰⁰ Shramshakti Report: Report of the National Commission on Self-Employed Women and Women in the Informal Sector, New Delhi, 1988

provisions of the Act are constantly violated.⁶⁰¹ Women are exploited even more than the male workers and in many employments get even less wages than the male workers. Middlemen i.e. the contractors take advantage of the absence of workers organizations and the poor bargaining power of women workers and exploit the workers by taking a portion of their wage. Thus the workers who are already not getting the minimum wage end up with even less once they give the middlemen the cut of the wage agreed to, whether in advance or otherwise. Hence, unionization, availability of legal grievance redressal mechanisms and legal awareness are necessary to thwart these processes of exploitation of the woman worker.

In the interests of budget transparency, it's vital to elucidate the programmes and initiatives taken so that an individual will understand where the resources are being utilized. Farmers are told that the method for considerably increasing the minimum support has already started and that they are going to be group action larger gains within the next crop. However individuals is getting tough to believe this as it cannot be seen coming from the allocations for the food grant or allocations for the agriculture ministry.

As it is, this year (20-19) the Union budget has been given during a state of affairs of a lot of bigger uncertainty concerning resource accessibility than in traditional years, partially thanks to product and Services Tax-related factors. Revenue receipts up to Gregorian calendar month 2017 were 53% of Budget Estimates for the year, compared with 58% for a similar amount for the preceding year.

This is why we'd like to be additional cautious this year concerning the downward redaction of Budget Estimates for a few aspects of social sector outlay. Some widely-publicized initiatives could also be used only for pre-election information and stay confined to simply many areas, united doesn't see any resource mobilization for correct national-level implementation. there's would like for terribly careful scrutiny of social sector expenditure throughout the yr – which could also be additional true this year than others.

Interpretation of statute is one of the vital functions of the courts in administering justice so as to know the intention of the legislature making the law. The novel character of the Hon'ble Supreme Court of law making is an unquestionable realism. Recently, there has been a radical change in the role of the Supreme Court of interpreting laws and

⁶⁰¹ T.S. Papola, G.S Mehta, Vinoj Abraham, Labour Regulation in Indian Industry, Volume 3, Labour Regulation and its impact A review of Studies and Documents, 2008.

it is evident from the above discussed chapter judicial perception that Indian judiciary has frolicked beneficial role in interpretation of legal provisions for the implementation of the existing labour welfare laws. It is significant to mention here that the Judiciary has no doubt played an activist role towards matter relating to social security, payment of compensation for employment injury and disability etc.

It is clear by now that the fundamental rights and the Directive Principles are not strictly divided according to civil and political rights on one hand and economic, social and rights on the other hand respectively. But the review of the rights enshrined in Part IV is not prohibited explicitly by the court. If there is a responsibility upon the State to secure to the citizens an adequate means of livelihood and the right to work, it would be absolute literalism to exclude the right to livelihood from the content of the right to life. The State may not, by affirmative action, be compellable to provide adequate means of livelihood or work to the citizens. Directive Principles of state policies⁶⁰² are designed to give an idea to the Government, both Central and State, to make laws towards the labour to secure for them social order and living wages, keeping with the economic and political conditions of the country. The workers are most vulnerable especially those working in the unorganized sector of the economy like agriculture, forestry, livestock, textile and textile products, construction etc. In these sectors workers, generally, tend to be employed in the lowest paid, most tedious tasks using the least technology. The principles contained in Articles 39(a) and 41 must be regarded as equally fundamental in the understanding and interpretation of the meaning and content of fundamental rights.

The analysis of the litigations reaching the Supreme Court as described above, have given rise to the Court articulating and recognizing the specific rights of the Labour. It is evident from that the Supreme Court stepped in to safeguard the fundamental human rights of workers and it is also apparent that there are several instances where such rights are blatantly desecrated. They are working different segments of the labour market in unorganized sector getting the lowest wages. There are even instances in some sectors of workers being paid less than work they do for example in the tea plantations, construction, agriculture etc., as compared to the minimum wages fixed by the state.

Laws need to be reviewed from time to time as per the requirement of the changing society. Though, Labour is one of the subject in the concurrent list (seventh schedule) of the Constitution of India, the State Governments have very little role in enacting labour

⁶⁰² The Articles 21, 38, 39, 41, 42, 43, 43-A and 47 of the Constitution

legislation. Thus, FICCI⁶⁰³ appeal shifting of the subject “labour” from concurrent list to the State list of the constitution so that the state have more economic independence to legislate welfare legislation according to their own requirement in order to combat the issue.⁶⁰⁴

In order to make the existing labour legislation employment friendly, simplification of archaic laws must be made and create single window system under the common headlines. This can be achieved by making the existing labour legislation into one comprehensive law. Such as there must be a one legislation governing terms and conditions of employment,⁶⁰⁵ one legislation governing wages⁶⁰⁶, one legislation governing welfare⁶⁰⁷ and one legislation governing social security⁶⁰⁸

For better interpretation and understanding, a standardized definition of terms ‘industry’ is necessary across the statutes.⁶⁰⁹

The condition of workers in China is not different than that of workers in India. The implementation of labour law in China has historically been weak, but the recent amendment in China labour law in 2007 is the first major reform in over a decade. The Chinese Government enacted new Labour Contract Law. This legislation sought pressure to the firm to give workers written contract that would help workers enforce their legal right at the workplace because local government put economic growth and business interest above the workers well being

To conclude no body step back and said what is the situation of labour in India, who is representing the interest of the workers who are not covered by the labour laws that prevails. Thus one needs to step back to make it meaningful.

⁶⁰³ The Federation of Indian Chambers of Commerce and Industry is an association of business organizations in India. Established in 1927

⁶⁰⁴ Currently, there are 44 labour laws under the purview of Central Government and more than 100 under State Governments, which deal with a host of labour issues. Unfortunately, these labour laws protect only 7-8 percent of the organized sector workers employed at the cost of 93 per cent unorganized sector workers. *Also visit* <http://iasmaker.com/contents/display/labour-reforms-in-india/>

⁶⁰⁵ Which may consolidate Industrial Disputes Act, 1947; Industrial Employment (Standing Orders) Act, 1946; Trade Unions Act, 1926 into one head

⁶⁰⁶ Minimum Wages Act, 1948; Payment of Wages Act, 1936; Payment of Bonus Act, 1965

⁶⁰⁷ Factories Act, 1948; Shops and Establishments Act; Maternity Benefits Act, 1961; Employees’ Compensation Act, 1952 and Contract Labour (Regulation & Abolition) Act, 1970

⁶⁰⁸ Employees Provident Funds and Miscellaneous Provisions Act, 1952; Employees State Insurance Act, 1948 and Payment of Gratuity Act, 1972

⁶⁰⁹ Available at <http://iasmaker.com/contents/display/labour-reforms-in-india/>

SUGGESTION

Following are section wise key suggestions required in the existing laws:

a) **Industrial Disputes Act 1947**

The definition of 'industry' under Section 2(j) had been amended in 1982, but could not be enforced due to absence of a parallel machinery to investigate and settle the disputes in the excluded category of the establishments. Parliament in its own wisdom thought it prudent to save certain institutions like hospitals, education and research institutions from the vagaries of industrial unrest like strikes and lockouts, and kept them out of preview of Section 2(j). The amended definition of 'industry' should, therefore, be enforced forthwith.

Definition of 'workman' Section 2(s) defining 'workman' needs to be amended. Excessive protection given to the employees in the higher salary brackets in the organized sector like Airlines, Bank, Insurance, etc., has not helped to make these employees accountable to the establishment and the society at large. On the contrary, it has tended to erode the overall discipline. Further, Supervisors, Managers and people holding administrative positions irrespective of the salary limits, should be taken out from the purview of the definition of 'workman'.

Strikes and Lock-outs India is perhaps the only country, where the requirement of strike notice is absent barring public utility service. This does not give adequate time to the parties to take pre-emptive steps and avert the situation through negotiations. A reasonable period of notice of strike is, therefore, essential. Section 23 of the ID Act to be amended to provide that a 14 days notice of strike should be compulsory. Further, to democratize the functioning of trade unions, the Strike Ballot should be supported by at least 75% of the workers working in the enterprise. Go-slow and work to rule are the most pernicious forms, even worse than strike. The economic loss caused by go-slow is far graver than strike. It has not yet been prohibited in our legislation. It should be recognized as a 'strike'.

Voluntary Arbitration must be Promoted to Discourage Litigation Section 10A, providing for Voluntary Arbitration, has failed in its objective. Arbitration should be promoted as an alternative dispute resolution machinery to discourage litigation. A panel of expert arbitrators needs to be appointed.

Publication of Awards According to Section 17 of the existing Industrial Disputes Act, only a published award becomes enforceable on the expiry of 30 days from date of its publication. The requirement of publishing Award is a mere formality, consuming time and resources. The same can be communicated to the parties like a Judgment of the Civil Court, which should become enforceable on the expiry of 30 days after the Judgment, to give adequate time to parties to file Appeal, if it is necessary.

b) Factories Act, 1948

Definition of ‘Occupier’ Section 2 (n) ‘Occupier’ shall be a person who has ultimate control over the affairs of the factory but restricting the definition of ‘Occupier’ only to a ‘Director’ in the case of Private sector with multiple factories, who may not be stationed at the site of the factory all the times, puts unreasonable restrictions. Rather the definition of “occupier” need to be extended to any managerial person vested with the ultimate control of the factory by a resolution of the Board of Directors.

With regard to the Annual Leave with Wages⁶¹⁰ the proposal for reducing the qualifying period of worked days from 240 to 90 days for availing annual leave with wages will promote unnecessary absenteeism among the regular workers. However, the proposal can be made applicable for the baadli/casual worker by mentioning it in a specific clause. In case of regular workers the existing 240 days may continue.

c) Employees’ State Insurance Act, 1948

Applicability and Coverage During the previous Government’s regime, the ESIC in its meeting held on September 19, 2013, proposed for enhancement of the salary limit for coverage of employees under the ESI Act from existing limit of Rs. 15000/- to Rs. 25000/- per month, and it was approved by the corporation despite objections raised by the employers’ representatives. This extra burden, due to enhancing the coverage, would negatively impact the viability of the enterprises and would even lead to a negative effect on employment generation. Moreover, the ESI dispensaries are lacking in important medicines, doctors, paramedical staff and other important infrastructure, hampering regular and satisfactory services to the employees.

⁶¹⁰ Factories Act 1948, sec 79

To conclude, the researcher suggests that the penal provisions in all these laws need to be revisited. Workers need to be protected and respected. The threshold in the legislation should be removed. The Government while framing a policy on labour, transgender person's rights should also be recognized in terms of employment, healthcare services and access to facilities.